

**Dismissed w.o.j. and Opinion Filed November 23, 2022.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-22-01005-CR**

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**YAT HO WONG, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 219th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 219-85349-2021**

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**MEMORANDUM OPINION**

Before Justices Molberg, Partida-Kipness, and Carlyle  
Opinion by Justice Partida-Kipness

Before the Court is appellant Yat Ho Wong's October 12, 2022 motion to dismiss this appeal. We deny appellant's motion but dismiss the appeal on other grounds on the Court's own motion.

On September 23, 2022, appellant filed a pro se notice of appeal in three cases asserting his intent "to appeal the conviction dated the 15th day of September, 2022." Two of the three cases, Cause Nos. 05-22-01005-CR and 05-22-01006-CR, arise from the 219th Judicial District Court. The third case, Cause No. 05-22-01007-CR, arises from a misdemeanor case in Collin County Court at Law No. 6.

In Cause No. 05-22-01005-CR, the trial court clerk transmitted with the notice of appeal a September 21, 2022 trial court order dismissing the case and a September 28, 2022 “Withdrawal of Notice of Appeal,” filed by appellant’s counsel. In the withdrawal document, counsel stated he was appointed to represent appellant after appellant filed the pro se notice of appeal. Counsel further stated appellant “does not seek to appeal to the Court of Appeals the Order of Dismissal signed by the court on September 21, 2022 in this cause and matter.” This Court construed the withdrawal as a motion to dismiss the appeal and denied the motion because appellant did not sign it. *See* TEX. R. APP. P. 42.2(a) (requiring appellant and counsel both sign motion to dismiss appeal).

Counsel then filed the pending motion to dismiss. In the motion before us, counsel asks this Court to dismiss the appeal in Cause No. 05-22-01005-CR because appellant does not seek to appeal the dismissal order signed by the trial court in the associated trial court cause no. 219-85349-2021. Although appellant signed the motion to dismiss, he included the words “under duress” beside his signature.

In the absence of evidence shedding light on appellant’s intentions, we cannot grant a voluntary dismissal where, as here, the appellant signs the motion to dismiss with a notation that he signed the motion under duress. *See* TEX. R. APP. P. 42.2(a); *see also Connors v. State*, 966 S.W.2d 108, 110 (Tex. App.—Houston [1st Dist.] 1998, pet. ref’d) (explaining apparent purpose of rule 42.2(a) signature requirement is to protect defendant from having appeal dismissed by counsel without defendant’s

consent and to provide counsel with notice so counsel can advise defendant about dismissal). We, therefore, deny appellant's motion to dismiss appeal.

On our own motion, we conclude dismissal is proper on other grounds. A defendant may appeal only from judgments and appealable orders. TEX. CODE CRIM. PROC. art. 44.02; TEX. R. APP. P. 25.2(a)(2). An appellate court may exercise jurisdiction only where such jurisdiction is authorized by law. *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008).

Here, the trial court entered an order dismissing the case. A defendant may not appeal from a dismissal order. TEX. R. APP. P. 25.2(a)(2); *Bohannon v. State*, 352 S.W.3d 47, 48 (Tex. App.—Fort Worth 2011, pet. ref'd) (order dismissing charging instrument is not appealable order for defendant under rule 25.2(a)(2)); *Petty v. State*, 800 S.W.2d 582, 583–84 (Tex. App.—Tyler 1990, no pet.) (per curiam) (dismissal of indictment is not appealable order). Because there is no appealable order, we dismiss Cause No. 05-22-01005-CR for want of jurisdiction.

/Robbie Partida-Kipness/  
ROBBIE PARTIDA-KIPNESS  
JUSTICE

Do Not Publish  
TEX. R. APP. P. 47.2(b)  
221005F.U05



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

YAT HO WONG, Appellant

No. 05-22-01005-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 219th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 219-85349-  
2021.

Opinion delivered by Justice Partida-  
Kipness. Justices Molberg and  
Carlyle participating.

Based on the Court's opinion of this date, the appeal is **DISMISSED FOR  
WANT OF JURISDICTION**.

Judgment entered November 23, 2022